

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

REC'D TN
REGULATORY AUTH.

CONSUMER ADVOCATE DIVISION)

vs.)

BELLSOUTH TELECOMMUNICATIONS,)
INC.)

Docket No.

'99 APR 13 PM 3 53

OFFICE OF THE
EXECUTIVE SECRETARY

99-00246

99-00246

COMPLAINT

Complainant Consumer Advocate Division of the Office of the Attorney General would respectfully show:

I

1. That the complainant, Consumer Advocate Division of the Office of the Attorney General ("CAD"), 425 5th Avenue North, 2nd Floor Cordell Hull Building, Nashville, Tennessee, 37243, represents the interest of Tennessee consumers pursuant to Tenn. Code Ann. §§ 65-4-118 and 65-5-210 (b).

II

2. That defendant, BellSouth Telecommunications, Inc. (BellSouth), 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201-3300 is a publicly held utility and is subject to the jurisdiction of the Tennessee Regulatory Authority ("Authority") pursuant to Tenn. Code Ann. § 65-4-101. Counsel for BellSouth is Guy Hicks, Esq.

III

3. That BellSouth has filed numerous secret, special contracts which contain secret rates and discounts which benefit individual customers and further that BellSouth is discriminating against

other similarly situated customers, communities and localities it does not prefer by failing or refusing to charge the similarly situated customers, communities and localities the same discounted or rebated rates, even though the customers, communities and locations purchase the same services provided in the secret, special contracts.

IV

4. That Tenn. Code Ann. § 65-4-122 provides:

(a) If any common carrier or public service company, directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned such common carrier or other public service company commits unjust discrimination, which is prohibited and declared unlawful.

* * *

(c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

See also, Tenn. Code Ann. §§ 65-4-122 and 65-5-204.

5. That Tenn. Code Ann. § § 65-4-122 and 65-5-204 provide rules of construction for the determination of unlawful discrimination under Title 65.
6. That BellSouth's practice of entering into secret, special contracts with lower rates and higher discounts than are charged to other consumers constitute unjust discrimination under Tenn. Code Ann. §§ 65-4-122 and 65-5-204 since they permit BellSouth to directly or

indirectly, give undue or unreasonable preference to certain customers and/or are discriminatory and further that the secret, special contracts are devices which, directly or indirectly, by special rate, rebate, drawback, or other device, permit BellSouth to charge, demand, collect, or receive a greater compensation from other persons not so favored for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions and that this preference and discrimination is unlawful and unjust.

V

7. That price discrimination is the practice of selling the same product at two or more prices where the price differences do not reflect cost differences.
8. That price discrimination is the practice of selling the same product at two or more prices where the price differences do not reflect cost differences and that BellSouth engages in price discrimination with respect to its special contracts and further that persons who are not charged the lower discounted or rated rates are unduly and unjustly discriminated against.
9. That BellSouth makes service price differences with respect to the services provided by its secret special contracts based not on cost differences, but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other unexplained factors not reflecting the cost of providing service.
10. That BellSouth makes price differences based not on cost differences, but on such considerations as competitive relationships, the technology used by the requesting carrier,

the nature of the service the requesting carrier provides, revenues the consumer provides in other BellSouth state territories or other unexplained factors not reflecting the cost of providing service and that its prices to different consumers are arbitrary discriminatory, unlawful and anti-competitive.

11. That BellSouth issues special contracts in conjunction or partnership with other regional bell operating companies (RBOC(s)) and further that BellSouth unlawfully discriminates against Tennessee consumers by granting some consumers CSA discounts in part because the consumer(s) have contracts with other RBOC's.
12. That BellSouth should be required to fully and publicly disclose the services, quantities and prices for the services it is charging in the secret, special contracts and that BellSouth should be required to charge all similarly situated customers the same lower rates, including the highest discount or rebate provided for in the highest discount or rebated contract service arrangement (CSA).
13. That BellSouth should be required to identify all consumers who have, based upon its records, used the services and quantities contained in its special contracts and charge each of them the lower discounted or rebated rates provided in the special contract(s).

VI

14. That BellSouth should be prohibited from charging any customer penalties for terminating service which is unrelated to its actual incremental cost of providing service under any special contract or which are more than just and reasonable for providing service and that such termination penalties constitute unlawful extortion pursuant to Tenn. Code Ann. § 65-4-122 (b).

15. That BellSouth's special contracts in some cases offer one or more services at predatory prices, have illegal tying arrangements, give preferences to competitive services or affiliated entities and that its termination penalties are anti-competitive and that the Tennessee Regulatory Authority should enter an order prohibiting such practices in accordance with the standards of Tenn. Code Ann. § 65-5-208 (c).
16. That a list of special contracts at the time this complaint was drafted is attached as exhibit A to this complaint and that CAD intends that its allegations include any and all special contracts of BellSouth for which the company has not publicly disclosed all of the prices for services and extended the lower resulting rates to all similarly situated consumers, including but not limited to those which the agency may be considering.

VII

17. That BellSouth has adopted, maintains or enforces practices or measurements with respect to the prices for services by those persons, localities or communities which do not have special contracts, and also within the group of specially benefitted customers who do have special contracts and that those practices or measurements are unjust, unreasonable, unduly preferential or discriminatory and that BellSouth withholds or refuses service which can be reasonably demanded and furnished at the special contract prices and the Consumer Advocate Division respectfully requests the Tennessee Regulatory Authority to order that BellSouth furnish services to those persons, localities or communities at the discounted or rebated special contract prices pursuant to Tenn. Code Ann. § 65-4-115.

Wherefore the Consumer Advocate Division prays that the Tennessee Regulatory Authority find that BellSouth through the use of its special contracts is directly or indirectly, by any special

rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions and that BellSouth is making or giving an undue or unreasonable preference or advantage to particular persons or localities, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage, and further to order BellSouth to provide all customers and localities with the lowest discounted or rebated prices provided by its most discounted and lowest rate secret, special contract.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that price discrimination is the practice of selling the same product at two or more prices where the price differences do not reflect cost differences and that BellSouth engages in price discrimination with respect to its special contracts and that persons who are not charged the lower discounted or rebated rate are discriminated against.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that BellSouth makes price differences based not on cost differences, but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other factors not reflecting the cost of providing service and that its price differences are discriminatory, unlawful and anti-competitive.


The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that BellSouth makes price differences based not on cost differences, but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the

requesting carrier provides, or other unexplained factors not reflecting the cost of providing service and that its prices to different consumers are arbitrary discriminatory, unlawful and anti-competitive.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority enter an order prohibiting termination penalties which are not cost justified, prohibit preferences to competitive services or affiliated entities, predatory pricing of services, price discrimination, tying arrangements, anti-competitive practices.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that BellSouth has adopted, maintains or enforces practices or measurements with respect to the prices for services by those persons, localities or communities which do not have special contracts and within the group of customers who do have special contracts and that those practices or measurements are unjust, unreasonable, unduly preferential or discriminatory and that BellSouth withholds or refuses service which can be reasonably demanded and furnished at the special contract prices and the Consumer Advocate Division respectfully requests the Tennessee Regulatory Authority to order that BellSouth furnish services to those persons, localities or communities at the discounted or rebated special contract prices and for other relief as is just.

Respectfully Submitted,

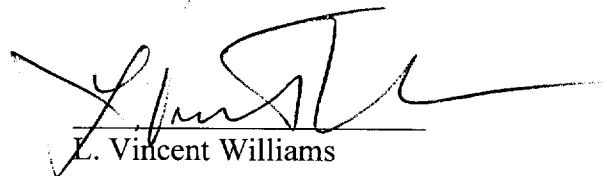
A handwritten signature in black ink, appearing to read 'L. Vincent Williams', is written over a horizontal line.

L. Vincent Williams
Deputy Attorney General-Consumer Advocate
Consumer Advocate Division
425 Fifth Ave., North, Second Fl.
Nashville, TN 37243
615-741-8723
B.P.R. No. 011189

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been mailed postage prepaid to the parties listed below this 13th day of April, 1999.

Guy Hicks, Esq.
BellSouth Communications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300



L. Vincent Williams

EXHIBIT A

Tariff/ Docket No.	CSA No.	File Date
91-185/		
91-08535	89-511 FG	10/28/91
92-013	91-602 MT	1/16/92
95-59	90-601-FG	3/20/92
93-171	TN93-1621-01	8/13/93
94-260	TN94-0240-03	11/4/94
94-209	TN93-2155-12	12/15/94
96-139	TN96-1835-00	7/1/96
96-148	TN96-2944-00	7/22/96
96-191	TN96-0080-02	9/6/96
96-191	TN96-0079-04	9/6/96
96-191	TN96-1075-00	9/6/96
96-195	TN96-0663-01	9/9/96
96-206	TN96-1507-02	9/20/96
96-225	TN96-0951-02	10/11/96
96-230	TN96-2924-00	10/15/96
96-231	TN96-6105-00	10/15/96
96-274	TN96-4460-02	11/20/96
96-275	TN96-0100-00	11/20/96
96-276	TN96-2998-00	11/21/96
97-003	TN96-4451-00	1/9/97
97-018	TN96-3674-01	1/22/97
97-020	TN96-7528-00	1/27/97
97-025	TN96-4742-01	1/28/97
97-024	TN96-6783-01	1/28/97
97-022	TN96-5814-01	1/28/97
97-031	TN96-6494-00	1/31/97
97-036	TN96-8071-00	2/5/97
97-090	TN96-7508-01	3/11/97
97-091	TN96-5789-00	3/11/97
97-093	TN96-5680-00	3/11/97
97-094	TN96-5663-00	3/11/97
97-098	TN96-6465-01	3/13/97
97-099	TN96-7039-01	3/13/97
97-110	TN96-6146-01	3/20/97
97-111	TN96-6184-01	3/20/97
97-114	TN96-1372-03	3/21/97
97-115	TN96-5616-04	3/24/97
97-117	TN96-0984-00	3/25/97
97-118	TN96-4179-01	3/25/97
97-120	TN96-0328-01	3/27/97
97-122	TN96-7644-00	3/31/97
97-125	TN97-0234-02	4/1/97
97-131	TN96-7558-00	4/2/97
97-129	TN96-7346-01	4/2/97

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No.	CSA No.	File Date
97-127	TN96-7250-00	4/3/97
97-128	TN96-6183-00	4/3/97
97-130	TN97-1621-00	4/3/97
97-132	TN96-7778-00	4/4/97
97-134	TN97-0065-00	4/7/97
97-135	TN96-8163-00	4/7/97
97-137	TN96-7911-00	4/8/97
97-136	TN97-0647-00	4/9/97
97-138	TN97-0638-00	4/10/97
97-146	TN96-7967-03	4/14/97
97-147	TN96-8056-01	4/14/97
97-145	TN96-7970-02	4/14/97
97-144	TN96-7973-01	4/14/97
97-148	TN96-7961-02	4/14/97
97-153	TN97-0076-00	4/17/97
97-152	TN97-0386-00	4/17/97
97-154	TN97-1431-00	4/18/97
97-164	TN97-2272-00	4/24/97
97-163	TN97-0120-00	4/24/97
97-167	TN96-7719-00	4/28/97
97-169	TN97-0741-00	4/29/97
97-170	TN97-0178-00	4/30/97
97-171	TN96-7795-00	5/1/97
97-172	TN97-0185-01	5/2/97
97-173	TN96-7933-01	5/5/97
97-174	TN97-0237-00	5/6/97
97-186	TN97-1981-01	5/9/97
97-187	TN96-7657-01	5/12/97
97-189	TN96-7105-00	5/13/97
97-188	TN97-0875-00	5/13/97
97-194	TN97-1682-00	5/14/97
97-198	TN97-1265-00	5/15/97
97-203	TN97-0725-00	5/16/97
97-202	TN96-8059-00	5/17/97
97-201	TN96-7067-00	5/18/97
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97-211	TN97-0400-00	5/22/97
97-214	TN97-1573-00	5/23/97
97-215	TN97-3041-00	5/27/97
97-216	TN97-0126-00	5/28/97
97-217	TN97-0137-02	5/29/97
97-218	TN96-8125-00	5/30/97
97-222	TN97-2002-00	6/2/97

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**Tariff/
Docket**

No.	CSA No.	File Date
97-226	TN97-0165-00	6/3/97
97-227	TN97-0930-00	6/3/97
97-225	TN96-8091-01	6/3/97
97-233	TN97-0168-00	6/9/97
97-235	TN97-0198-01	6/10/97
97-237	TN97-0244-00	6/11/97
97-239	TN97-1320-00	6/12/97
97-240	TN97-0134-00	6/13/97
97-242	TN97-0789-00	6/16/97
97-247	TN97-1278-00	6/17/97
97-255	TN97-1641-00	6/18/97
97-257	TN96-6923-00	6/19/97
97-258	TN96-6924-00	6/20/97
97-264	TN97-2162-00	6/26/97
97-275	TN97-3741-00	7/7/97
97-277	TN97-3836-00	7/14/97
97-281	TN97-3797-00	7/15/97
97-303	TN97-0175-00	7/21/97
97-312	TN97-4019-00	8/1/97
97-311	TN97-3942-00	8/1/97
97-313	TN97-4161-00	8/1/97
97-320	TN97-4617-00	8/8/97
97-324	TN97-4315-00	8/11/98
97-325	TN97-1855-03	8/13/97
97-342	TN96-5893-02	8/26/97
97-346	TN97-5138-00	9/2/97
97-363	TN97-5195-00	9/15/97
97-365	TN97-4621-00	9/16/97
97-374	TN96-7822-01	9/19/97
97-375	TN97-5077-02	9/22/97
97-379	TN97-1890-03	9/24/97
97-382	TN97-4972-00	9/25/97
97-386	TN97-4175-00	9/29/97
97-07452	TN97-5305-00	10/3/97
97-07472	TN97-3847-00	10/15/97
97-07491	TN97-2819-00	10/21/97
97-07524	TN97-1174-00	11/3/97
97-07527	TN97-6375-00	11/5/97
97-07544	TN97-4364-00	11/17/97
97-07560	TN97-4577-01	11/24/97
97-07564	TN97-6568-00	11/25/97
97-07565	TN97-3836-00	11/24/97
97-07587	TN97-6032-01	12/5/97
97-07608	TN97-5989-00	12/12/97
97-07617	TN97-6059-00	12/15/97

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Tariff/ Docket No.	CSA No.	File Date
97-07618	TN97-6678-00	12/16/97
98-00006	TN97-6316-00	1/6/98
98-00010	TN97-5998-01	1/7/98
98-00009	TN97-7019-00	1/8/98
98-00028	TN97-6824-00	1/20/98
98-00033	TN97-6831-01	1/21/98
98-00031	TN97-6833-00	1/22/98
98-00059	TN98-0217-00	2/3/98
98-00066	TN97-6154-00	2/6/98
98-00107	TN97-5347-01	2/16/98
98-00114	TN98-0112-00	2/18/98
98-00129	TN98-0445-00	2/25/98
98-00131	TN98-0443-00	2/26/98
98-00149	TN97-4003-01	3/2/98
98-00151	TN96-6105-00	3/3/98
98-00158	TN96-7822-01	3/10/98
98-00204	TN98-0076-00	3/23/98
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98-00255	TN98-0897-00	4/3/98
98-00261	TN97-6667-01	4/8/98
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98-00288	TN98-1313-00	4/16/98
98-00300	TN98-1588-00	4/24/98
98-00341	TN98-1665-00	5/1/98
98-00381	TN98-0060-05	6/1/98
98-00391	TN98-2301-00	6/8/98
98-00399	TN98-1645-00	6/10/98
98-00402	TN98-2390-00	6/15/98
98-00408	TN98-2703-00	6/16/98
98-00417	TN98-2488-00	6/22/98
98-00419	TN98-2426-00	6/23/98
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98-00442	TN98-2335-01	6/29/98
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98-00485	SE98-3082-00	7/20/98
98-00513	TN98-1491-00	7/28/98
98-00520	TN98-3183-00	7/30/98